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## **Reopening Reality for Small Construction (less than 50 employees): The FFCRA and What to do When an Employee is Exposed to COVID-19.**

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Practically speaking, and despite taking careful precautions, it is likely that one of your employees will become exposed to COVID-19 before the Families First Coronavirus Relief Act (FFCRA) expires on December 31, 2020 (unless otherwise extended by Congress).

If you're the owner of a construction company with less than 50 employees, you are probably already aware that your business is exempt from the long-available Family and Medical Leave Act (FMLA), which traditionally provides workers with a guaranteed timeframe of unpaid, job-protected, time off of work, in certain circumstances (following the birth of a child, military deployment, etc.).

Notably, this is not the case with the newer FFCRA, which went into effect on April 1, 2020. The FFCRA covers most employers with less than 500 employees, meaning the FFCRA applies even where the FMLA does not – i.e. for those of you with less than 50 employees.

Here is what you need to know:

**When is FFCRA paid leave available?** FFCRA paid leave is available for employees in the following COVID-19 related situations:

- The employee has been advised by a health care provider to self-quarantine related to COVID-19;
- The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- The employee is caring for an individual subject to quarantine, told to self-quarantine or experiencing symptoms and seeking diagnosis;
- The employee is caring for his or her child whose school or place of care is closed or whose childcare provider is unavailable due to COVID-19 related reasons;

- The employee is subject to a Federal, State or local quarantine or isolation order related to COVID-19; or
- The employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

\*Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability, if the leave requirements would jeopardize the viability of the business as a going concern.

**How much FFCRA paid leave is available?** In short, under the FFCRA, the employee could be eligible for:

- Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; OR
- Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; AND
- Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

**Is my company responsible for covering the paid leave required by the FFCRA?** Yes. If your employee qualifies for FFCRA paid emergency sick leave under one of the conditions listed above, as the employer, your business is responsible for making the required payments to the employee, as provided by the FFCRA.

These payments are limited to a certain dollar amount per day and for a certain time frame. Additionally, the amount that you're required to pay employees differs based on whether the employee is full time or part time, and based upon which of the above conditions qualifies them for FFCRA relief. Please seek legal counsel for a more detailed analysis of how much you may be required to pay, and for how long, for your business' and employee's unique circumstances.



**Is there tax relief to offset my costs of providing FFCRA leave?** Yes. Amounts paid for authorized FFCRA payments are a 100% refundable tax credit to your business.

**One of my workers has provided notice that they've been exposed to COVID-19, what do I do now?** Encourage your employee to get tested and/or seek medical treatment, but do not require your employee to get tested. Follow CDC guidelines regarding when your employee should return to the worksite.

Once you know how your employee is impacted, you will know which provision of the FFCRA kicks in and what percentage of leave you are required to pay (the amount of which will be refundable via a 100% tax credit to your business).

Seek legal counsel if you are not sure of your obligations.